

**Remarks**

The present Amendment and Response is believed to be fully responsive to the Non-final Office Action dated December 15, 2008. After entry of the present Amendment, Claims 12-39 remain pending. By this Amendment, independent Claims 12 and 21 have been amended. Claims 1-11 were previously withdrawn without prejudice by prior response. It is respectfully submitted that no new matter has been added by the foregoing amendments. Reconsideration of the application is requested in view of the following remarks.

**Claim Rejections Under 35 U.S.C. § 103**

In the Non-final Office Action, Claims 12, 14-17, 21, 23-26, and 30-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,422,953 to Fischer (hereinafter "*Fischer*") in view of U.S. Pat. No. 6,049,874 to McClain et al. (hereinafter "*McClain*") and further in view of U.S. Pat. No. 5,774,525 to Kanevsky et al. (hereinafter "*Kanevsky*"). Claims 13 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Fischer* in view of *McClain* and *Kanevsky* and further in view of U.S. Pat. No. 6,775,772 to Binding et al. (hereinafter "*Binding*"). Claims 18 and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Fischer* in view of *McClain* and *Kanevsky* and further in view of the Applicants' allegedly Admitted Prior Art (hereinafter "AAPA"). Claims 19, 20, 28, and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of *Fischer*, *McClain*, *Kanevsky*, and the AAPA in view of U.S. Pat. No. 6,594,759 to Wang (hereinafter "*Wang*").

By the present Amendment, independent Claims 12 and 21 have been amended in order to clarify the scope of the claimed inventions of Claims 12 and 21. Specifically, independent Claim 12 has been amended to include "generating, within the secure device, a verification status indicator based at least in part on a comparison of pre-stored verification data stored by the secure device to input verification data received from a user of the secure device and as a function of whether data associated with a verification status has been output from the device

within a predefined period of time, wherein the verification status indicator does not include the pre-stored verification data or the input verification data" (Underlining supplied). Independent Claim 21 has been amended in a similar manner. Support for these amendments is provided at least in the last paragraph of page 21 of the Specification as originally filed, which corresponds to paragraph [0127] of the Specification as published, and which states:

Examples of possible verification statuses include "match" and "no match" between the verification data and the prestored data, and degrees of match or difference between the prestored data (e.g., when the verification data and prestored data comprises biometric values). The verification statuses also may further represent whether a verification status has been provided to the recipient **130** within a predefined period of time. The predefined period of time may comprise, for example, the time since the last comparison of verification data with prestored data that resulted in a successful verification, the time since the last receipt of input **150** representing verification data, or simply a predetermined amount of time, as discussed above.

In marked contrast to the Applicants' claimed inventions, neither *Fischer*, *McClain*, *Kanevsky*, *Binding*, nor *Wang*, either taken alone or in combination, disclose, teach, or suggest generating a verification status indicator within the secure device based at least in part on a comparison of pre-stored verification data stored by the secure device to input verification data received from a user of the secure device and as a function of whether data associated with a verification status has been output from the device within a predefined period of time, as recited by the amended independent claims. Although *Fischer* discusses the certification of a user of a personal data/time notary device, the certification is conducted by a certifier and not by the device itself (See *Fischer* at column 6, lines 43-57). As recognized by the Office Action on

page 3, there is no teaching or suggestion of a validation of a user being conducted by the device by comparing pre-stored verification data stored by the device to input verification data received from a user of the device, where the verification status does not include the pre-stored verification data or the input verification data. Additionally, there is no teaching or suggestion of generating a verification status indicator within the device as a function of whether data associated with a verification status has been output from the device within a predefined period of time. Accordingly, it is respectfully submitted that *Fischer* does not teach or suggest each and every element of the amended independent claims.

The Office Action relies on *Kanevsky* to teach the features of generating a verification status indicator based on a comparison of input data and pre-stored data, wherein the verification status indicator does not include the pre-stored or input data as a message. *Kanevsky*, however, does not teach or suggest generating a verification status indicator as a function of whether data associated with a verification status has been output from the device within a predefined period of time. Accordingly, it is respectfully submitted that *Kanevsky*, either taken alone or in combination with *Fischer*, does not teach or suggest each and every element of the amended independent claims.

Furthermore, *McClain*, *Binding*, and *Wang* all fail to teach or suggest the feature of generating a verification status indicator within the secure device and providing the verification status indicator to the computer program application. *McClain*, *Binding*, and *Wang* also fail to teach or suggest that the verification status indicator is generated as a function of whether data associated with a verification status has been output from the device within a predefined period of time and that the generated verification status indicator does not include the pre-stored verification data or the input verification data.

As a result of identifying a verification status of a device “as a function of whether data associated with the verification status has been output from the device within a predefined period of time,” the claimed inventions of amended independent Claims 12 and 21 may provide additional security options to a recipient (e.g., external apparatus) of authentication data without

compromising sensitive information that is stored in the device (e.g., the biometric data). For example, as set forth on page 23 of the Specification, in certain embodiments of the invention, at least four verification statuses may be utilized. A first verification status may indicate a lack of verification data since a resetting of the device, a second verification status may indicate a match between input data and prestored data where no indicator has been output from the device since the match, a third verification status may represent a failed match, and a fourth verification status may indicate a match where an indicator has been output since the match. A lower risk would be associated with the second verification status than the other three verification statuses because it likely represents the entry of valid verification data for a current authentication transaction. A relatively higher risk may be associated with the fourth verification status because that status may indicate a situation in which the device has been activated for authentication and then utilized for several authentication transactions. During the time between a first authentication transaction and a second authentication transaction, the device may have been misplaced or stolen.

For at least these reasons, it is respectfully asserted that amended independent Claims 12 and 21 are allowable over *Fischer*, *McClain*, *Kanevsky*, *Binding*, and *Wang*, either taken alone or in any combination thereof. Therefore, it is respectfully contended that the amended independent claims are in condition for allowance.

Additionally, it is respectfully submitted that dependent Claims 13-20 and 22-37 are allowable as a matter of law as depending from an allowable base claim, notwithstanding their independent recitation of patentable features. Accordingly, it is respectfully asserted that the pending claims of the application are in condition for allowance and prompt allowance of the same is requested.

#### **Patentability of Dependent Claims 38 and 39**

Dependent Claims 38 and 39 were added by the Amendment and Response filed on April 23, 2008. Dependent Claim 38 includes the recitation of the message data being “modified by the verification status indicator prior to originating the digital signature.” Additionally,

dependent Claim 38 includes the recitation of the verification status indicator to being provided to the computer program as “a component of the generated digital signature.” Dependent Claim 39 includes similar recitations. Support for these claims is provided at least in paragraph [0225] of the Specification.

Although the Office Action indicates that these claims are unpatentable over *Fischer* in view of *McClain* and *Kanevsky*, the Office Action offers no explanation for these rejections. It is respectfully submitted that neither *Fischer*, *McClain*, *Kanevsky*, *Binding*, nor *Wang*, either taken alone or in any combination thereof, teaches or suggests modifying the message data with a verification status indicator prior to originating the digital signature, such that the verification status indicator is included in the digital signature. Accordingly, it is respectfully submitted that dependent Claims 38 and 39 recite features that are not taught or suggested by the cited art of record. Additionally, it is respectfully asserted that dependent Claims 38 and 39 are allowable as a matter of law as depending from an allowable base claim for which arguments for patentability are set forth above. For at least these reasons, it is respectfully contended that dependent Claims 38 and 39 are allowable over the cited art of record.

**Conclusion**

It is believed that each matter raised by the Non-final Office Action has been addressed. It is not believed that extensions of time or fees for net addition of claims are required beyond those which may be otherwise provided for in the documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 19-5029.

If there are any issues which can be resolved by teleconference call or an Examiner's Amendment, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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Date: **February 18, 2009**

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FDC No. 019500US

Attorney Docket: 34250-1174